IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4939 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AVALKHAN MOHD KHAN BABI BROTHER OF DETENUE ABDUL KARIMA @

Versus

DISTRICT MAGISTRATE

Appearance:

MR NM KAPADIA for Petitioner

MR AJ DESAI,A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/02/2000

ORAL JUDGEMENT

Heard learned advocate Mr. H. R. Prajapati for learned advocate Mr. N. M. Kapadia for the petitioner and learned A.G. P. Mr. A. J. Desai for the respondents Nos. 1, 2 and 3.

1. One Avalkhan Mohd. Khan Babi, brother of the detenu, Abdul Karim @ Babu Gulam Rasul Vohra has filed the present petition under Article 226 of the Constitution of India challenging the detention order dated 3.6.1999 passed by the respondent No. 1 District Magistrate, Mehsana, in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short).

2. The grounds of detention served upon the detenu under Section 9(1) of the "PASA", copy of which is produced at running page No. 21, interalia, indicate that seven prohibition cases are registered against the petitioner at Mehsana City Police Station in between 15.9.1998 to 22.2.1999. That the Indian made foreign liquor has been seized in each cases. That all the cases are pending in Court for trial.

It further indicates that four witnesses, on assurance of their anonymity, have given their statements dated 26.3.1999, 9.4.1999, 1.4.1999 and 5.4.1999 respectively in respect to prejudicial anti-social activities of the detenu.

3. That on the basis of above stated material, the respondent No. 1 as Detaining Authority, has come to the conclusion that the detenu is a "bootlegger" within the meaning of Section 2(b) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activities, and thereby, in order to prevent the petitioner from continuing his such activities, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that the impugned order is bad in law on account of delayed action of passing detention order to the last registered case and the alleged anti-social activities of the detenu. It is submitted that detention order is based on last registered case, which was registered on 22.2.1999. That thereafter, the statements of anonymous witnesses were recorded in April, 1999 and verified on 11.4.1999. Despite these facts, the impugned order is passed on 3.6.1999 without any reasonable explanation in the grounds of detention.

5. In the matter of Pradip Nilkanth Paturkar Vs Ramamurthi and others, reported vide AIR, 1994, SC, 656, the Hon'ble Supreme Court has elaborated the proposition

of law that if the delay in passing detention order from the date of last registered case on which, the detention order is based is not satisfactorily explained by the Detaining Authority, the order can not be said to be valid and deserves to be struck down. That the said proposition has been followed in different matters and this Court in the matter of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported vide 1997 (1), GLH, 381 has also reiterate the said proposition, after referring several authorities of Supreme Court.

6. In the instant case, despite service of Rule, none of the respondents has filed any affidavit. That the grounds of detention are devoid of any explanation for taking the delayed action in as much as, though the Detaining Authority was aware of the fact that last case registered against the detenu is dated 22.2.1999 and the information received through anonymous witnesses were verified on 11.4.1999, what prevented the Detaining Authority from taking action till 3.6.1999. As in absence of any reasonable explanation, said delay being inordinate delay, the order can not be sustained and deserves to be quashed.

7. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 3.6.1999 passed by the respondent No. 1 against the petitioner is hereby quashed and set aside. The petitioner Abdul Karim @ Babu Gulam Rasul Vohra, is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

Date : 21.02.2000. (A. K. Trivedi, J.)

PALLAV.